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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

**[Docket No. 120405263-3999-02]**

**RIN 0648-BB76**

### **Fisheries of the Exclusive Economic Zone Off Alaska; Tanner Crab Area Closure in the Gulf of Alaska and Gear Modification Requirements for the Gulf of Alaska and Bering Sea Groundfish Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 89 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA groundfish FMP) and revise regulations governing the configuration of modified nonpelagic trawl gear. First, this rule establishes a protection area in Marmot Bay, northeast of Kodiak Island, and closes that area to fishing with trawl gear except for directed fishing for pollock with pelagic trawl gear. The closure will reduce bycatch of Tanner crab (*Chionoecetes bairdi*) in Gulf of Alaska (GOA) groundfish fisheries. Second, this rule requires that nonpelagic trawl gear used in the directed flatfish fisheries in the Central Regulatory Area of the GOA be modified to raise portions of the gear off the sea floor. The modifications to nonpelagic trawl gear used in these fisheries will reduce the unobserved injury and mortality of Tanner crab, and will reduce the potential adverse

impacts of nonpelagic trawl gear on bottom habitat. Finally, this rule makes a minor technical revision to the modified nonpelagic trawl gear construction regulations to facilitate gear construction for those vessels required to use modified nonpelagic trawl gear in the GOA and Bering Sea groundfish fisheries. This rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the GOA groundfish FMP, and other applicable law.

**DATES:** Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Electronic copies of Amendment 89 to the GOA groundfish FMP, the proposed rule, the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for the Area Closures for Tanner Crab Protection in Gulf of Alaska Groundfish Fisheries (Area Closures EA/RIR/IRFA), and the EA/RIR/IRFA for Trawl Sweep Modification in the Flatfish Fishery in the Central Gulf of Alaska (Trawl Sweep EA/RIR/IRFA) are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the GOA groundfish FMP and under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. The North Pacific Fishery Management Council (Council) prepared the fishery management plans under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the fishery management plans appear at 50 CFR parts 600 and 679.

The Notice of Availability of Amendment 89 was published in the Federal Register on June 3, 2013, with a 60-day comment period that ended August 2, 2013 (78 FR 33040). The Secretary of Commerce approved Amendment 89 on August 26, 2013. NMFS published a proposed rule to implement Amendment 89 and the revision to the modified nonpelagic trawl gear construction regulations on June 17, 2013 (78 FR 36150). The 30-day comment period on the proposed rule ended July 17, 2013. NMFS received a total of 8 comment letters on Amendment 89 and the proposed rule during the comment periods. The letters contained 11 unique comments. A summary of these comments and NMFS' responses are provided in the "Comments and Responses" section of this preamble.

This final rule implements the following actions for the management of the trawl fisheries in the Central GOA Regulatory Area and for modified nonpelagic trawl gear construction standards for the GOA and Bering Sea (BS) flatfish fisheries. The proposed rule preamble provides additional information on the three regulatory actions implemented by this final rule, including detailed information on the development of the actions, the impacts and effects of the actions, and the Council's and NMFS' rationale for the actions (78 FR 36150, June 17, 2013). The proposed rule is available from the NMFS Alaska Region web site (see **ADDRESSES**).

#### Action 1: Marmot Bay Tanner Crab Protection Area

This rule establishes a protection area called the Marmot Bay Tanner Crab Protection Area (Marmot Bay Area). The Marmot Bay Area is northeast of Kodiak Island and extends westward from 151 degrees 47 minutes W longitude to State waters between 58 degrees N latitude and 58 degrees 15 minutes N latitude. With one exception, this rule closes the Marmot Bay Area year-round to directed fishing for groundfish by vessels using trawl gear. Directed

fishing for pollock by vessels using pelagic trawl gear is exempt from this closure. The term “directed fishing” is defined in regulation at § 679.2.

The Marmot Bay Area shares borders with the Marmot Flats and Outer Marmot Bay Areas, shown in Figure 5 to part 679. The Marmot Flats Area is closed year-round to directed fishing with nonpelagic trawl gear (see § 679.22(b)(1)(i) and Figure 5 to part 679). The Outer Marmot Bay Area is open to directed fishing with nonpelagic trawl gear unless otherwise closed. The Marmot Bay Area overlaps with a portion of the Outer Marmot Bay Area. In this area of overlap, the more restrictive measures implemented for the Marmot Bay Area apply. Overall, the effect of the Marmot Bay Area closure is to extend, to the north and east, areas of State and Federal waters that are closed year-round to nonpelagic trawl gear. Additionally, the Marmot Bay Area closure prohibits the use of all trawl gear, other than pelagic trawl gear used to conduct directed fishing for pollock.

#### Action 2: Modification of Nonpelagic Trawl Gear Used in the Central GOA Directed Flatfish Fisheries

This rule requires vessels using nonpelagic trawl gear when directed fishing for flatfish in the Central GOA to comply with the gear performance standard and construction requirements specified in § 679.24(f). Section 679.24(f) requires the use of elevating devices to raise the elevated section of the sweeps at least 2.5 inches and requires these elevating devices be installed on each end of the elevated section and be spaced along the entire length of the elevated section of the sweeps no less than 30 feet (9.1 m) apart. These are the same performance standard and gear construction requirements applied to vessels in the Bering Sea flatfish fisheries.

To allow for construction flexibility and wear and tear that might occur during a tow, § 679.24(f) provides for two different sweep configurations that specify the maximum spacing of

elevating devices. The first configuration uses elevating devices that have a clearance height of 3.5 inches (8.9 cm) or less with spacing between the elevating devices of no more than 65 feet (19.8 m). The second configuration uses elevating devices that have a clearance height greater than 3.5 inches (8.9 cm) with spacing between the elevating devices of no more than 95 feet (29 m). Either configuration combined with the minimum spacing for elevating devices of no less than 30 feet (9.1 m) meets the combined gear construction requirements and performance standard for modified nonpelagic trawl gear.

### Action 3: Technical Revision to the Modified Nonpelagic Trawl Gear Construction Requirements in the BSAI

This rule implements a revision to one component of the regulations at § 679.24(f) concerning construction requirements for modified nonpelagic trawl gear to increase the length limit for the lines that connect the doors and the net to the elevated portions of the sweeps from 180 feet (54.8 m) to 185 feet (56.4 m). This limit is shown on Figure 26 to part 679. Specifically, the revision slightly increases the maximum length to 185 feet (56.4 m) for the lines between the door bridles and the elevated section of the trawl sweeps, and between the net, or headline extension, and the elevated section of the trawl sweeps. This revision applies to the construction requirements for modified nonpelagic trawl gear currently required in the Bering Sea flatfish fisheries and in this rule for the Central GOA flatfish fisheries.

### Summary of Regulatory Revisions Required by the Actions

The actions described above require the following changes to regulations. This final rule revises two definitions and adds one definition in regulations at § 679.2. The definition of “federally permitted vessel” is revised to include the application of this definition to those vessels required to use modified nonpelagic trawl gear in the Central GOA flatfish fisheries.

This revision identifies vessels required to comply with the modified nonpelagic trawl gear requirements and is consistent with existing modified nonpelagic trawl gear requirements.

The definition of “directed fishing” is revised to add a definition of the directed flatfish fisheries in the GOA. This revision lists the flatfish target species that are used in determining when modified nonpelagic trawl gear is required under § 679.24(f) based on directed fishing for flatfish. This revision is necessary to identify the target species that determines when a vessel is directed fishing for flatfish so the requirement to use modified nonpelagic trawl gear can be applied.

A definition of the Marmot Bay Tanner Crab Protection Area is added to § 679.2. This definition is necessary to identify the location of the area and to define this area consistent with other fishery management areas with similar restrictions.

Section 679.7(b) is revised to prohibit a federally permitted vessel from directed fishing for flatfish in the Central GOA without using modified nonpelagic trawl gear. This revision is necessary to require the use of modified nonpelagic trawl gear for directed fishing for flatfish in the Central GOA Regulatory Area and to ensure that the modified nonpelagic trawl gear meets the performance standard and construction requirements specified at § 679.24(f).

Section 679.22 is revised to add the Marmot Bay Tanner Crab Protection Area as an area closed to trawling in the GOA. The closure includes an exemption for vessels directed fishing for pollock with pelagic trawl gear. This revision is necessary to identify the area closed, the applicable gear type, and the target fishery exempted from the closure.

Section 679.24(f) is revised to include reference to the Central GOA flatfish fisheries. This revision is necessary to require vessels using nonpelagic trawl gear to directed fish for flatfish in the Central GOA to comply with the modified nonpelagic trawl gear requirements in

this section.

Figure 5 to part 679 is revised to add an illustration and definition of the Marmot Bay Tanner Crab Protection Area. This area includes Federal waters westward from 151 degrees 47 minutes W longitude to State waters between 58 degrees 0 minutes N latitude and 58 degrees 15 minutes N latitude. Use of trawl gear, other than pelagic trawl gear used in directed fishing for pollock, is prohibited at all times in the Marmot Bay Tanner Crab Protection Area. This revision is necessary to identify the Marmot Bay Tanner Crab Protection Area as described in Amendment 89. Due to the revision of Figure 5 to part 679, the table of coordinates for this figure is revised to reflect the removal of letters that identified coordinate locations on several, already established protection areas. In addition, the coordinates in the current table are corrected from degree, minutes, seconds to degree, decimal minutes. This revision improves the clarity of the table coordinates in combination with the revised figure and ensures the correct coordinates are listed in the consistent format used for other closure areas in the regulations.

Figure 26 to part 679 is revised to show the 185-foot (56.4 m) limit for the lines connecting the elevated section of the sweeps to the door bridles and to the net or headline extensions. The revision to Figure 26 is necessary to illustrate the changes to the construction requirements for modified nonpelagic trawl gear.

#### Summary of Changes from Proposed Rule

NMFS did not make any changes in this final rule to the regulatory text contained in the proposed rule.

#### Comments and Responses

NMFS received 8 letters of comment containing 11 unique comments on the notice of availability for Amendment 89 (78 FR 33040, June 3, 2013) and on the proposed rule (78 FR 36150, June 17, 2013). A summary of the comments received and NMFS' responses follow.

Comment 1: We support the requirement to use modified nonpelagic trawl gear to protect bottom habitat and to reduce unobserved Tanner crab mortality.

Response: NMFS acknowledges the comment.

Comment 2: Members of the Central GOA flatfish fishing fleet cannot afford any more closures. The number of fishing locations for trawl vessels operating in flatfish fisheries is limited due to Steller sea lion protection measures and other habitat protection measures. Operators of trawl vessels, especially trawl vessels in the rock sole fishery, need the ability to move to areas that would be closed by this rule to avoid salmon and halibut bycatch and to have a protected location for efficient and safe fishing, especially for smaller trawl vessels. The Marmot Bay Area closure should be modified to apply only to the deep water flatfish complex fishery so that other flatfish fisheries, such as the rock sole fishery, would not be affected. This modification would protect Tanner crab, which is more likely to occur in deeper, mud habitat affected by the deep water flatfish complex fishery. The rock sole fishery occurs in shallower, rocky habitat, and does not impact Tanner crab.

Response: The Council considered the effects on the shallow-water flatfish fishing fleet when developing its recommendations for this action (see Section 3.1 of the Area Closures EA/RIR/IRFA). In the Area Closures EA/RIR/IRFA, the crab survey, crab fishery, and shallow-water flatfish fishery figures show that the location of Tanner crab overlaps with the location of the shallow-water flatfish fishery in the closure area (see Figures 14, 15, 25, and Color Figure 5 in the Area Closures EA/RIR/IRFA). Limiting the closure area to the deep-water flatfish



complex fishery will not remove the potential adverse effects of the shallow-water flatfish complex fishery on Tanner crab, including trawl effects on benthic habitat and Tanner crab injury and mortality.

NMFS determined that the Council's recommended closure of the Marmot Bay Area is necessary and appropriate based on: 1) the high rate of Tanner crab mortality by vessels using nonpelagic trawl gear in the Marmot Bay Area relative to other areas in the Central GOA; 2) the observation of mature male and female Tanner crab populations within the Marmot Bay Area; 3) the occurrence of known Tanner crab habitat within the Marmot Bay Area; 4) the high rate of Tanner crab bycatch by vessels using trawl gear relative to pot gear within the Marmot Bay Area; and 5) the limited historical fishing in this area overlapping with the occurrence of Tanner crab, which reduces the economic impact on fishery participants while minimizing the adverse impacts to Tanner crab from nonpelagic trawl gear.

NMFS agrees with the commenter's assertion that avoiding salmon and halibut bycatch may include moving fishing activities to other locations and that having fewer locations to choose from may reduce fishing efficiency. However, only two to three percent of the annual nonpelagic trawl shallow-water flatfish catch, which includes the rock sole fishery, has occurred in the Marmot Bay Area compared to total shallow-water flatfish catch in Area 630, the area of the Central GOA affected by this rule (see Table 37 in the Area Closures EA/RIR/IRFA). Based on these data indicating limited historical flatfish fishing activity in the closure area, it is likely that these vessels can find efficient and safe locations outside the closure area to fish for rock sole and other flatfish species and avoid halibut and salmon bycatch.

Comment 3: The Marmot Bay Area closure area should be limited to Alaska Department of Fish & Game (ADF&G) statistical area 525807 and should not include ADF&G statistical

area 515802. Statistical area 515802 has bountiful rock sole that is harvested with nonpelagic trawl gear at 17 to 30 fathoms, and in our experience this catch has not resulted in Tanner crab bycatch. Tanner crab occurs primarily in the western portion of the proposed Marmot Bay Area, which includes statistical area 525807. Closing the eastern portion of the proposed Marmot Bay Area, which includes ADF&G statistical area 515802, to the rock sole fishery is unjust and will have an economic impact on fishing businesses, the processors dependent on deliveries, and on the Kodiak community.

Response: The Council carefully considered the boundaries of the Marmot Bay Area to protect Tanner crab and understood the potential impact on shallow-water flatfish fishing, which includes rock sole. The Council considered closing only ADF&G statistical area 525807, but extended the closure area to include a portion of ADF&G statistical area 515802, based on data indicating that Tanner crab occur eastward of ADF&G statistical area 525807, which includes ADF&G statistical area 515802. The Council's final recommendation established the boundaries of the Marmot Bay Area closure based on crab survey data that showed Tanner crab occurring in ADF&G statistical area 515802 (see section 3.1.4 of the Area Closure EA/RIR/IRFA). Specifically, information in Color Figures 2, 4, 5, and 6 in the Area Closures EA/RIR/IRFA show groundfish catch in ADF&G statistical area 515802. Color Figure 5 shows that shallow-water flatfish catch occurs in ADF&G statistical area 515802. Figure 26 in the Area Closures EA/RIR/IRFA shows the directed Tanner crab fishery occurring in much of ADF&G statistical area 515802 where shallow-water flatfish fishing has also occurred (see also Color Figure 5). The Council and NMFS determined that it is likely that Tanner crab occur in this location and may be impacted by nonpelagic trawling based on the amount of Tanner crab prohibited species catch (PSC) observed in nonpelagic trawls used in flatfish fisheries the Marmot Bay Area,

including the rock sole fishery (see Table 17 in the Area Closures EA/RIR/IRFA) and based on the potential effects of nonpelagic trawl gear on benthic habitat. The Council considered the potential economic effects on vessels participating in the nonpelagic trawl fishery compared to the benefits to Tanner crab resources in making their closure recommendation. Under this rule, NMFS anticipates that the imposition of this trawl closure will not prevent the GOA groundfish fisheries from achieving the annual total allowable catch (TAC) for these species. Because catch from the Marmot Bay Area represents only a small proportion of the total groundfish catch by vessels using nonpelagic trawl gear, NMFS anticipates that vessels will be able to catch the TACs of groundfish species that have been caught in the Marmot Bay Area in neighboring areas not closed to this gear. For more detail, see Section 3.1 and Section 6.6 of the Area Closures EA/RIR/IRFA and the preamble to the proposed rule (June 17, 2013; 78 FR 36150).

Comment 4: We disagree with the statement in the proposed rule that there are no conservation measures currently in the GOA to address adverse interactions with Tanner crab by groundfish vessels using trawl gear. Tanner crab is designated as a prohibited species in the groundfish fisheries, which requires immediate discard. This is a conservation measure. Nonpelagic trawl closures to protect king crab and to protect Steller sea lions also protect Tanner crab. In 1989, the EA/RIR/IRFA prepared for extending the king crab closures under Amendment 18 to the GOA groundfish FMP indicates that these king crab closures protected about 75 percent of the Tanner crab stocks year-round.

Response: The preamble of the proposed rule states that no specific conservation measures exist in the Central GOA to address adverse interactions with Tanner crab by vessels using trawl gear to directed fish for groundfish. NMFS made this statement because this rule implements conservation measures specifically developed to address adverse effects on Tanner

crab from the groundfish fisheries. The Marmot Bay Area is specifically intended to minimize Tanner crab bycatch and effects on their habitat to the extent practicable. NMFS agrees that other conservation measures taken to protect habitat, marine mammals, or other crab species also may have beneficial effects on Tanner crabs, but none of these measures were specifically developed for that purpose. While the designation of Tanner crab as a prohibited species prevents groundfish fishermen from retaining the species, the designation alone does not provide any limit on the total amount of Tanner crab caught as bycatch or provide any other protection from potential adverse effects of groundfish fisheries.

Comment 5: The potential benefits to Tanner crab from the Marmot Bay Area closure would be so small that the effect on the stock and the Tanner crab fishery would be immeasurable. The observed Tanner crab mortality in the Central GOA trawl fishery is less than 0.4 percent of the assessed crab population in the Central GOA. Depending on the assumptions made, the estimated number of male Tanner crabs saved from implementing the closure area is 435 to 163 crabs. The allowable Tanner crab bycatch rate in the GOA scallop fishery is 0.5 percent of total crab stock abundance based on the most recent survey data when the GOA Tanner crab fishery is closed and 1.0 percent when the GOA Tanner crab fishery is open. Why are these Tanner crab bycatch rates in the scallop fishery acceptable, but the Federal nonpelagic groundfish trawl fishery is held to a more restrictive Tanner crab bycatch rate?

Response: The purpose of this action is to provide additional protection to GOA Tanner crab from the potential adverse effects of groundfish fisheries. To that end, the Council and NMFS examined various areas in which Tanner crab and groundfish fishing overlap in the GOA and considered whether to close these areas year-round or seasonally to pot and/or trawl gear. The Council and NMFS considered the beneficial impacts of the Marmot Bay Area closure on

Tanner crab resources with the potential economic costs on participants in the nonpelagic trawl groundfish fisheries that will be excluded from this area. Though the rate of bycatch and number of crabs potentially saved is less than under the scallop fishery, the Council found that the closure area is practicable for minimizing Tanner crab bycatch in the groundfish fisheries.

Consistent with National Standards 1, 5, and 9, the Council and NMFS determined that the Marmot Bay Area closure, relative to other closure areas considered, balances the requirement to minimize bycatch to the extent practicable while continuing to allow the GOA groundfish fisheries the opportunity to achieve optimal yield efficiently. Though the potential impact on Tanner crab mortality in the closure area is small in relation to the entire Tanner crab stock in the GOA, the Council determined and NMFS agrees that the Marmot Bay Area closure will benefit Tanner crab through a reduction in PSC and unobserved mortality while minimizing the economic impact on participants in nonpelagic trawl fisheries. Moreover, data shows limited historical flatfish fishing activity in the closure area, and it is likely that these vessels can find efficient and safe locations outside the closure area to continue fishing. (See Section 6.5.2 of the Area Closures EA/RIR/IRFA.)

National Standard 9 states that conservation and management measures shall, to the extent practicable, minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. In establishing the Marmot Bay Area closure, the Council and NMFS determined what Tanner crab bycatch management measures were practicable for the GOA groundfish fisheries. The Council and NMFS have not established a Tanner crab bycatch rate that applies to all Federal fisheries. Instead, the Council and NMFS have developed management measures for the various Federal fisheries that minimize bycatch to the extent practicable for that fishery. Tanner crab bycatch in the scallop dredge fishery is controlled

through the use of crab bycatch limits. The Scallop FMP does not include provisions defining “prohibited species,” thus the distinction made under the Groundfish FMPs between bycatch and PSC does not apply to this (or other) non-groundfish FMPs regulating the BSAI and GOA (See Section 3.4.2 of the Area Closures EA/RIR/IRFA). Section 3.4.2 of the Area Closures EA/RIR/IRFA provides information showing that although Tanner crab bycatch limits for the scallop fishery are set at 0.5 percent or 1.0 percent of the total Tanner crab stock abundance estimate based on most recent survey data, estimated catch of Tanner crab in the Kodiak Northeast District scallop fishery between 2000 and 2009 has been significantly less than the annual Tanner crab bycatch limit.

Comment 6: Using closures to protect crab stocks has not improved crab stock abundance. The Kodiak king crab closures have been in place for 20 years with no improvement of the king crab stock abundance. NMFS should consider other methods to improve Tanner crab stocks, such as those employed by other Councils, including opening historical closures and using management methods that are more effective at balancing the Magnuson-Stevens Act national standards.

Response: The purpose of this action is not to improve Tanner crab stock abundance, but to further protect Tanner crab stocks from adverse effects of GOA groundfish fisheries. The Council and NMFS may use different management measures to protect a PSC species, including controlling or reducing bycatch in the groundfish fisheries or reducing impacts on the habitat that supports the PSC species. The selection of the management measure(s) depends on what is practicable to minimize the bycatch of the species and to reduce potential adverse effects.

The closure of the Marmot Bay Area and the modified trawl gear requirement were based on the analysis of alternative methods to reduce adverse effects on Tanner crab to the extent

practicable and based on the best available information. The opening of existing closure areas would require analysis of the potential impacts of opening closed areas to determine if the closures are not effective at reducing Tanner crab bycatch to the extent practicable and the other environmental and economic effects that may occur with the opening of an existing closure area. The analyses for this rule did not examine the effects of King crab closures on Tanner crab stocks, modifying existing closure areas, or other measures to improve the abundance of Tanner crab stocks as those actions are not within the scope of this action.

This rule is consistent with effective past measures the Council has recommended, and NMFS has implemented, to reduce impacts of nonpelagic trawl gear on crab populations, directly by limiting injury and mortality, and indirectly by reducing potential adverse habitat impacts. Because overall Tanner crab bycatch in the GOA groundfish fisheries can be small in relation to the Tanner crab population, but potentially concentrated in certain areas or at certain times, the Council and NMFS determined that time and area closures are more effective than Tanner crab PSC limits in reducing the potential impacts of nonpelagic trawl gear on Tanner crab stocks. Additionally, this rule requires that nonpelagic trawl gear used in the directed flatfish fisheries in the Central GOA be modified to raise portions of the gear off the sea floor. This requirement can reduce the adverse effects of nonpelagic trawl gear on Tanner, snow, and red king crabs by reducing the unobserved mortality and injury of these species.

Comment 7: We recommend that the name of the Marmot Bay Tanner Crab Protection Area be changed to the Marmot Bay Area to be consistent with names used in the Central GOA for other nonpelagic trawl closure areas and to remove the incorrect impression that this closure area is the only conservation measure for Tanner crab.

Response: The Council and NMFS selected the name for this closure area to reflect the sole purpose of the area, which is to protect Tanner crab. NMFS determined that there is no legal or policy reason that requires the use of similar names for the various crab closure areas in the Central GOA. Additionally, the other crab closure areas in the Central GOA were established to protect king crab and have names that reflect the primary reason for the closure (i.e., Kodiak Island Type I, II and III closures). Finally, NMFS determined that the name for the area indicates the purpose of the area, which is helpful in understanding the reason for the action for anyone not familiar with the development of the closure area. For these reasons, NMFS determined that the changes suggested by the comment are not necessary.

Comment 8: The preamble to the proposed rule on page 36151, second column, seventh paragraph lists the actions taken by the Council to protect Tanner crabs. Action 2 in the list incorrectly states that modified “pelagic” trawl gear would be required when directed fishing for flatfish in the Central GOA. Action 2 should have stated that the Council recommended the use of modified “nonpelagic” trawl gear when directed fishing for flatfish in the Central GOA.

Response: NMFS agrees that the preamble of the proposed rule at the location cited by the commenter incorrectly used the term “modified pelagic trawl gear,” where the term “modified nonpelagic trawl gear” should have been used. NMFS reviewed the preamble, as well as the proposed regulatory text, and found that this was the only location in the proposed rule that made an incorrect reference to modified pelagic trawl gear. Because the proposed rule is clear that the modifications being proposed apply to nonpelagic trawl gear used when directed fishing for flatfish in the Central GOA, NMFS determined that the proposed rule provided the public with a clear understanding of the changes being proposed and the public could reasonably comment on them.



Comment 9: We support the Marmot Bay Tanner Crab Protection Area closure to reduce the impacts of the trawl fleet on Tanner crab resources.

Response: NMFS acknowledges the comment.

Comment 10: NMFS should implement enhanced observer coverage in ADF&G Statistical Area 525702 and in the Chiniak Gully. These are locations of potentially high Tanner crab bycatch in the groundfish fisheries, and the restructured observer program implemented in 2013 will not provide the additional data needed to understand the impact on Tanner crab resources in these locations.

Response: As noted in detail in the preamble to the proposed rule (June 17, 2013; 78 FR 36150), the Council included as part of its recommendation for improved estimates of Tanner crab bycatch that NMFS “incorporate, to the extent possible, in [the restructured Observer Program], an observer deployment strategy that ensures adequate coverage to establish statistically robust observations” in three specific areas near Kodiak, AK, including the ones referenced by the commenter. The restructured observer program was effective beginning January 1, 2013 (November 21, 2012; 77 FR 70062). NMFS has determined that the Council’s recommendation has been implemented by the restructured observer program and no additional observer specific measures are needed with GOA Amendment 89. NMFS will use the regulations and deployment process established under the restructured Observer Program to obtain fishery catch and bycatch data without specifying additional observer coverage requirements in specific areas in the GOA. Establishing additional observer requirements in specific areas would result in biased data, which does not meet the data quality goals under the restructured Observer Program. Collecting Tanner crab bycatch data under the provisions of the restructured Observer Program meets the intent of the restructured observer program to provide

unbiased observer data to better inform fisheries management. In order to ensure that the Council's intent to obtain better observer data is being met, NMFS will present an observer deployment plan annually for the Council's review.

Comment 11: We agree with NMFS' decision to rely on Tanner crab bycatch data from the restructured observer program rather than requiring enhanced observer coverage in certain areas. The restructured observer program will provide science-based data needed to understand Tanner crab bycatch in all of the fleets that may affect Tanner crab. Adding an area-specific requirement for observing Tanner crab bycatch would undermine the unbiased collection of bycatch data that is expected from the restructured observer program.

Response: NMFS acknowledges the comment.

#### Classification

The NMFS Assistant Administrator determined that Amendment 89 to the GOA groundfish FMP is necessary for the conservation and management of the GOA groundfish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

This rule has been determined to be not significant for the purposes of Executive Order 12866.

#### Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis (FRFA) is required by the Regulatory Flexibility Act (RFA). This FRFA incorporates the initial regulatory flexibility analyses (IRFAs) prepared for the proposed rule and addresses the applicable requirements of section 604 of the RFA. A statement of the need for, and objectives of, this final rule is described in the preamble to this

rule and is not repeated here. This information also was provided in the preamble to the proposed rule.

#### Comments on the IRFAs

NMFS published a proposed rule to implement Amendment 89 and a regulatory amendment on June 17, 2013 (78 FR 36150), with comments invited through July 17, 2013. NMFS received 8 letters of comment from the public on Amendment 89 and the proposed rule. None of these comments specifically addressed the IRFAs, but Comments 2 and 3 expressed concerns about the potential cost of the Marmot Bay Area closure to commercial fishermen. NMFS' responses to these comments explain that the Council and NMFS considered potential costs to industry and recommended the smallest possible closure area to accomplish the objective of crab protection measures. In addition, the Council noted, and NMFS agrees that fishermen prohibited from fishing in the Marmot Bay Area have other fishing opportunities elsewhere in the GOA.

No comments on the proposed rule were filed with NMFS by the Chief Counsel for Advocacy of the Small Business Administration.

#### Number and Description of Small Entities Regulated by the Action

The determination of the number and description of small entities regulated by these actions is based on small business size standards established by the Small Business Administration (SBA). On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from \$ 4.0 million to \$ 19.0 million, Shellfish Fishing from \$ 4.0 million to \$ 5.0 million, and Other Marine Fishing from \$ 4.0 million to \$ 7.0 million. *Id.*, at 37400 (Table 1).

Pursuant to the RFA, and prior to SBA's June 20, 2013, final rule, two IRFAs were prepared for these actions using SBA's former size standards. The IRFAs were summarized in the "Classification" section of the preamble to the proposed rule. NMFS has reviewed the IRFAs in light of the new size standards. NMFS did not conduct a re-analysis of how many entities directly regulated by these actions would be categorized as small entities under the new size standards. However, for purposes of this FRFA, all directly regulated entities are assumed to be small entities. This is a conservative approach for this analysis.

#### Action 1: Area Closure

The entities directly regulated by Action 1 are those entities that participate in the groundfish fisheries using trawl gear in the Marmot Bay Area (except for pelagic trawl vessels directed fishing for pollock). From 2003 through 2009, 68 vessels used nonpelagic trawl gear in the Central GOA and therefore would be directly regulated by Action 1. Of these 68 vessels, 26 vessels had gross earnings of less than \$4.0 million so were categorized as small entities in the IRFA. For purposes of this FRFA, all 68 nonpelagic trawl vessels directly regulated by Action 1 are assumed to be small entities.

#### Action 2: Trawl Modification

The entities directly regulated by Action 2 are those entities that participate in the Central GOA flatfish fisheries. For Action 2, 51 vessels participated in the Central GOA flatfish fisheries in one or more years between 2003 and 2010, making these vessels directly regulated under Action 2. Of these 51 vessels, two catcher/processors and eight catcher vessels that participated in the Central GOA flatfish fisheries had gross earnings of less than \$4.0 million so were categorized as small entities in the IRFA. For purposes of this FRFA, all 51 vessels are assumed to be small entities.

### Action 3: Correction to Gear Construction Requirements

For Action 3, the same 51 vessels that are assumed to be small entities under Action 2 also would be small entities for Action 3. Because Action 3 also affects gear construction by flatfish vessels fishing in the Bering Sea subarea, this FRFA includes small entity information published in the Final Rule for Amendment 94 to the BSAI groundfish FMP (75 FR 61642, October 6, 2010). In 2007, all of the catcher/processors (CPs) targeting flatfish in the Bering Sea subarea (46 vessels) exceeded the \$4.0 million threshold that the SBA used at that time to define small fishing entities. Due to their combined groundfish revenues, the CPs would be considered large entities for purposes of the RFA at that time, but due to the increase in the SBA small business size standard some of these vessels may not exceed the new threshold and may be considered small entities. Based on their combined groundfish revenues, none of the four catcher vessels that participated in 2007 exceeded the SBA's small entity threshold, and these vessels are considered small entities for purposes of the RFA. It is likely that some of these vessels also are linked by company affiliation, which may then categorize them as large entities, but there is no available information regarding the ownership status of these vessels at an entity level. Because NMFS is unable to conduct a thorough re-analysis of how many entities directly regulated by these actions would be categorized as small entities under the new size standards, all the vessels directly regulated by Action 3 are assumed to be small entities. Therefore, the FRFA may overestimate the number of small entities directly regulated by Action 3.

### Recordkeeping, Reporting, and Compliance Requirements

These actions will not change recordkeeping and reporting requirements. Vessel operators will be required to comply with the specified area closure and gear requirements.

### Description of Significant Alternatives to the Final Action that Minimize Adverse Impacts on

## Small Entities

An FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected. “Significant alternatives” are those that achieve the stated objectives for the action, consistent with prevailing law with potentially lesser adverse economic impacts on small entities, as a whole.

### Action 1: Area Closure

During consideration of this action, the Council evaluated a number of alternatives to the preferred alternative, including 1) no action, 2) four permanent or seasonal area closures in which trawl or pot fishing would be prohibited, 3) four area closures in which trawl and pot fishing would only be allowed with increased observer coverage, 4) an exemption to the closures for vessels using pelagic trawl gear, and 5) an exemption to the closures for vessels using modified nonpelagic trawl gear. The “No Action” alternative would not have met the Council’s objectives for this action, and would have provided no specific conservation measures in the GOA to address adverse interactions with Tanner crab by trawl and pot sectors targeting groundfish.

None of the other alternatives would have both met the objectives of the action and had a smaller adverse economic impact on small entities when compared with the preferred alternative. Under the second alternative described above, the impact on these vessels would be proportional to the extent that they rely on the area for target fishing, the extent to which they are able to offset catches foregone in the closed areas, and the net costs of making the

adjustment. Observer data suggests that the nonpelagic trawl fisheries would be most impacted by area closures. Seasonal closures might reduce the adverse impacts on groundfish fishermen as vessels could fish in the areas for the remainder of the year, but would not meet the objectives of the action. Under the third alternative above, costs would increase to owners of 90 vessels that continued to fish in the closure areas that are not already required to have 100 percent or greater observer coverage. Table 57 in the Area Closures EA/RIR/IRFA shows the increased costs for observer coverage for vessels fishing in the proposed closure area. The fourth alternative, to exempt vessels using pelagic trawl gear from the Marmot Bay Area closure, would have the same effect as the preferred alternative because vessels using pelagic trawl gear in this area are directed fishing for pollock. The preferred alternative would prevent the use of pelagic trawl gear to directly fish for other groundfish species in this area, further protecting the area to any potential effects of pelagic trawl gear on habitat. Under the fifth alternative, an exemption to the closures for vessels using modified nonpelagic trawl gear, the average cost of the modification to fishermen using net reels, for the gear configuration used in the Central GOA, is initially approximately \$12,600 and approximately \$3,000 in annual maintenance. For vessels using main line winches to set and haul back the modified sweeps there may also be one-time costs for modifying the vessel to accommodate the sweep modification of \$20,000 to \$25,000 or higher, depending on current vessel configuration. This cost may be offset if the modification extends the useful life of the sweeps and reduces the frequency with which new gear must be purchased (See Section 6.6 of the Area Closures EA/RIR/IRFA).

Six of the eight public comments asked for the Marmot Bay Area to be either reduced or not implemented to provide for continued fishing in the area for shallow-water flatfish and particularly rock sole. The Council and NMFS considered the balance between forgone access

to this area for shallow-water flatfish fishing and the potential protection of Tanner crab resources in the Central GOA and determined that the benefits of protecting Tanner crab from the effects of trawling outweighed the loss of this location for shallow-water flatfish harvests. As noted in the response to Comment 2, only two to three percent of the annual nonpelagic trawl shallow-water flatfish catch, which includes the rock sole fishery, has occurred in the Marmot Bay Area compared to total shallow-water flatfish catch in Area 630 (see Table 37 in the Area Closures EA/RIR/IRFA). No changes were made in the final rule from the proposed rule.

#### Actions 2 and 3: Trawl Modification and Gear Construction

The Council considered two alternatives for Actions 2 and 3. The first is the “No Action” alternative, which does not require any modification to trawl sweeps for vessels targeting GOA flatfish, nor does it change the maximum length for the lines that connect the doors and the net to the elevated portions of the sweeps from 180 feet to 185 feet. The other alternative, the Council’s preferred alternative, requires vessels targeting Central GOA flatfish to modify their gear to reduce bottom contact. For all vessels, the additional cost of purchasing the modified gear appears to be \$3,000 to \$3,400, annually. Additionally, for vessels with net reels, there may be an additional cost for keeping replacement elevating devices on board, at a cost of approximately \$700 for a full replacement set. For vessels requiring a structural change to accommodate the modified trawls sweeps and continue to maintain the same catch rates, estimates provided by industry range from \$20,000 to \$25,000 (see Section 2.11 of the Trawl Sweep EA/RIR/IRFA).

The preferred alternative also extends the areas exempted from elevating devices on the net bridles and door bridles from 180 feet to 185 feet to accommodate hammerlocks attached to net and door bridles. This extension of the exempt areas applies to trawl sweep gear



modifications in the Bering Sea and Central GOA. This change to the gear construction requirement allows for accommodating the connecting devices with the current trawl sweeps, thus saving industry costs by constructing the gear using standardized parts. Based upon the best available scientific information, the aforementioned analyses, as well as consideration of the objectives of the action, it appears that there are no alternatives to this action with potentially less adverse economic impact while also accomplishing the stated objectives of the Magnuson-Stevens Act and other applicable statutes.

Taking public comment into consideration, NMFS has identified no additional significant alternatives that accomplish statutory objectives and minimize any significant economic impacts of the proposed rule on small entities.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall also explain the actions a small entity is required to take to comply with a rule or group of rules. The preambles to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preambles. Copies of this final rule are available from NMFS at the following Web site: <http://alaskafisheries.noaa.gov>.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 13, 2014.

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Alan D. Risenhoover, Director, Office of Sustainable Fisheries,  
performing the functions and duties of the Deputy Assistant Administrator  
for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

**PART 679-FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447.

2. In § 679.2, add paragraph (6) to the definition of “Directed fishing”, revise the definition of “Federally permitted vessel” and add in alphabetical order the definition of “Marmot Bay Tanner Crab Protection Area” to read as follows:

§ 679.2 Definitions.

\* \* \* \* \*

Directed fishing means:

\* \* \* \* \*

(6) With respect to the harvest of flatfish in the Central GOA Regulatory Area, for purposes of modified nonpelagic trawl gear requirements under §§ 679.7(b)(9) and 679.24(f), fishing with nonpelagic trawl gear during any fishing trip that results in a retained aggregate amount of shallow-water flatfish, deep-water flatfish, rex sole, arrowtooth flounder, and flathead sole that is greater than the retained amount of any other trawl fishery category as defined at § 679.21(d)(3)(iii).

\* \* \* \* \*

Federally permitted vessel means a vessel that is named on either a Federal fisheries permit issued pursuant to § 679.4(b) or on a Federal crab vessel permit issued pursuant to § 680.4(k) of this chapter. Federally permitted vessels must conform to regulatory requirements for purposes of fishing restrictions in habitat conservation areas, habitat conservation zones, habitat protection areas, and the Modified Gear Trawl Zone; for purposes of anchoring prohibitions in habitat protection areas; for purposes of requirements for the BS and GOA nonpelagic trawl fishery pursuant to § 679.7(b)(9), § 679.7(c)(5), and § 679.24(f); and for purposes of VMS requirements.

\* \* \* \* \*

Marmot Bay Tanner Crab Protection Area means a habitat protection area of the Gulf of Alaska specified in Figure 5 to this part that is closed to directed fishing for groundfish with trawl gear, except directed fishing for pollock by vessels using pelagic trawl gear.

\* \* \* \* \*

3. In § 679.7, add paragraph (b)(9) to read as follows:

§ 679.7 Prohibitions.

\* \* \* \* \*

(b) \* \* \*

(9) Conduct directed fishing for flatfish, as defined in § 679.2, with a vessel required to be federally permitted in the Central GOA Regulatory Area, as defined in Figure 3 to this part, without meeting the requirements for modified nonpelagic trawl gear specified at § 679.24(f) and illustrated in Figures 25, 26, and 27 to this part.

\* \* \* \* \*

4. In § 679.22, add paragraph (b)(3) to read as follows:

§ 679.22 Closures.

\* \* \* \* \*

(b) \* \* \*

(3) Marmot Bay Tanner Crab Protection Area. No federally permitted vessel may fish with trawl gear in the Marmot Bay Tanner Crab Protection Area, as described in Figure 5 to this part, except federally permitted vessels directed fishing for pollock using pelagic trawl gear.

\* \* \* \* \*

5. In § 679.24, revise the introductory text of paragraph (f) to read as follows:

§ 679.24 Gear limitations.

\* \* \* \* \*

(f) Modified nonpelagic trawl gear. Nonpelagic trawl gear modified as shown in Figure 26 to this part must be used by any vessel required to be federally permitted and that is used to directed fish for flatfish, as defined in § 679.2, in any reporting area of the BS or in the Central GOA Regulatory Area or directed fish for groundfish with nonpelagic trawl gear in the Modified Trawl Gear Zone specified in Table 51 to this part. Nonpelagic trawl gear used by these vessels must meet the following standards:

\* \* \* \* \*

6. Revise Figure 5 to part 679 to read as follows:

Figure 5 to Part 679– Kodiak Island Type 1, 2, and 3 Nonpelagic Trawl Closure Status and Marmot Bay Tanner Crab Protection Area  
(see § 679.22(b)(1) and (b)(3))

a. Map

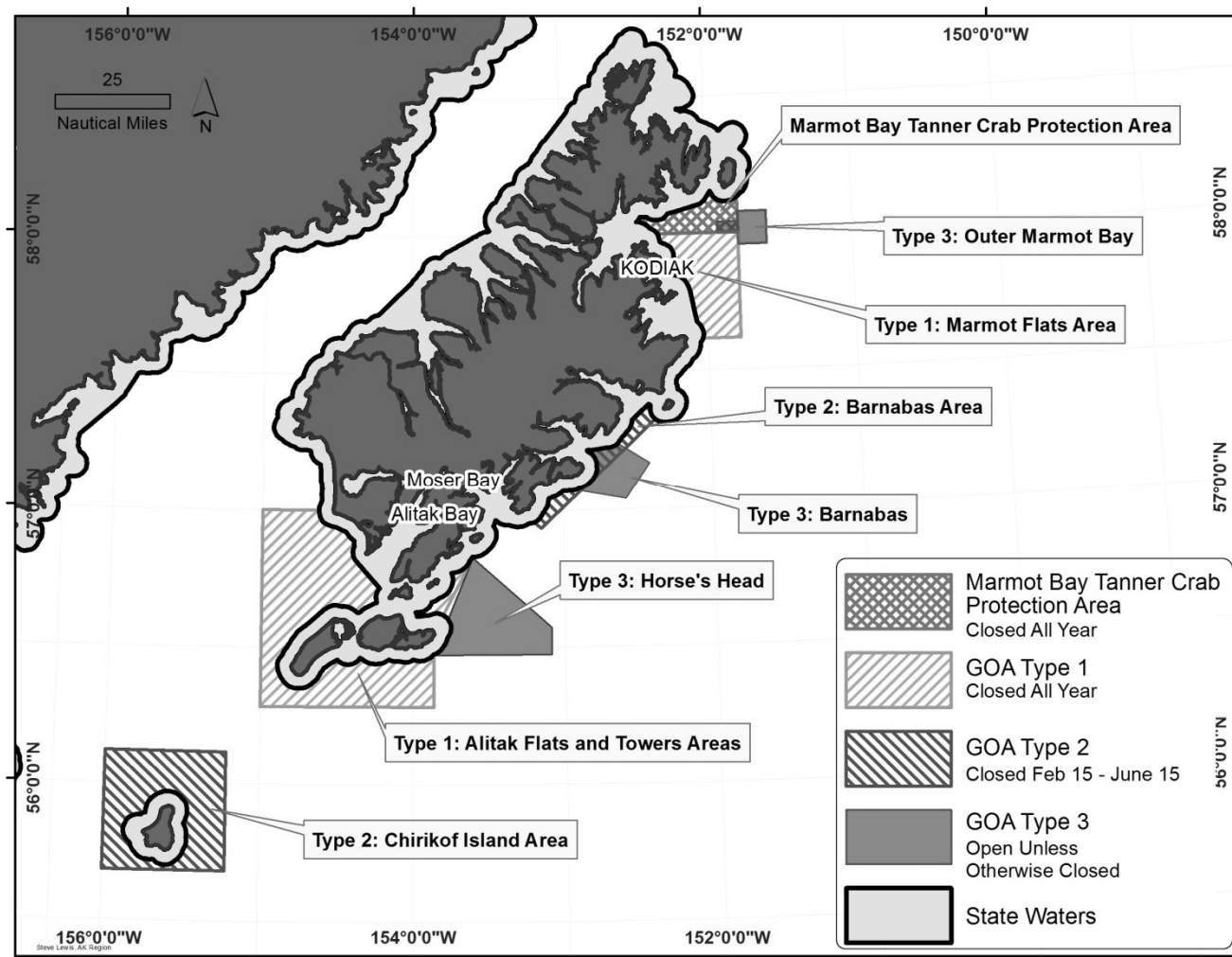


Figure 5 to Part 679. Kodiak Island Areas Closed to Nonpelagic Trawl Gear and Marmot Bay Tanner Crab Protection Area  
b. Coordinates

Name and Description of Reference Area	North Latitude / West Longitude	Reference Point
<b>Alitak Flats and Towers Areas</b>	All waters of Alitak Flats and the Towers Areas enclosed by a line connecting the following 7 points in the order listed: 56°59.4'N, 154°31.1'W 57°00.0'N, 155°00.0'W 56°17.0'N, 155°00.0'W 56°17.0'N, 153°52.0'W 56°33.5'N, 153°52.0'W 56°54.5'N, 153°32.5'W 56°56.0'N, 153°35.5'W 56°59.4'N, 154°31.1'W	Low Cape    Cape Sitkinak East point of Twoheaded Island Kodiak Island, thence, along the coastline of Kodiak Island until intersection of Low Cape. Low Cape
<b>Marmot Flats Area</b>	All waters enclosed by a line connecting the following five points in the clockwise order listed: 58°00.0'N, 152°30.0'W 58°00.0'N, 151°47.0'W 57°37.0'N, 151°47.0'W 57°37.0'N, 152°10.1'W 57°54.5'N, 152°30.0'W 58°00.0'N, 152°30.0'W	Cape Chiniak, then along the coastline of Kodiak Island to North Cape.
<b>Chirikof Island Area</b>	All waters surrounding Chirikof Island enclosed by a line connecting the following four points in the counter-clockwise order listed: 56°07.0'N, 155°13.0'W 56°07.0'N, 156°00.0'W 55°41.0'N, 156°00.0'W 55°41.0'N, 155°13.0'W 56°07.0'N, 155°13.0'W	
<b>Barnabas Area</b>	All waters enclosed by a line connecting the following six points in the counter clockwise order listed: 57°00.0'N, 153°18.0'W 56°56.0'N, 153°09.0'W 57°22.0'N, 152°18.5'W 57°23.5'N, 152°17.5'W 57°25.3'N, 152°20.0'W 57°04.2'N, 153°30.0'W 57°00.0'N, 153°18.0'W	Black Point.  South Tip of Ugak Island North Tip of Ugak Island Narrow Cape, thence, along the coastline of Kodiak Island Cape Kasick to Black Point, including inshore waters
<b>Marmot Bay Tanner Crab Protection Area</b>	All waters of the EEZ enclosed by straight lines across EEZ waters and following the boundary of the State of Alaska waters connecting the following six points clockwise in the order listed: 58°15.0'N, 152°30.0'W 58°15.0'N, 151°47.0'W 58°00.0'N, 151°47.0'W 58°00.0'N, 152°30.0'W 58°15.0'N, 152°30.0'W	

7. Revise Figure 26 to part 679 to read as follows:



Figure 26 to Part 679 – Modified Nonpelagic Trawl Gear

This figure shows the location of elevating devices in the elevated section of modified nonpelagic trawl gear, as specified under § 679.24(f). The top image shows the location of the end elevating devices in the elevated section for gear with net bridles no greater than 185 feet in length. The bottom image shows the location of the beginning elevating devices near the doors and the end elevating devices near the net for gear with net bridles no greater than 185 feet in length.

